



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

CRS
Docket No: 3056-99
9 November 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 17 December 1973 at age 17. Your record reflects that you became an unauthorized absentee on 5 April 1974. On 11 December 1974 you were convicted by civil authorities of robbery. The court sentenced you to confinement for not less than nine months or more than three years. You were released from confinement and restored to military control on 8 September 1976. You received nonjudicial punishment on 29 October 1976 for absence from your appointed place of duty on six occasions.

Your military record shows that on 19 November 1976 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the unauthorized absence of 887 days, from 5 April 1974 to 8 September 1976. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted and, as a result of this action, you were spared the

stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. Subsequently, you received a second nonjudicial punishment for an unauthorized absence of 157 days. You received an other than honorable discharge on 6 May 1977.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity and the contention that under current standards, your discharge would be different. However, the Board found these factors were not sufficient to warrant recharacterization of your discharge given your request for discharge to avoid trial for an unauthorized absence of more than 29 months, and your two disciplinary actions and civil conviction. The Board believed that considerable clemency was extended to you when your request to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. In this regard, you would have received exactly the same type of discharge under current standards. Therefore, the Board concluded that your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director